

AMENDED IN SENATE SEPTEMBER 1, 2011

AMENDED IN SENATE AUGUST 30, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 366

Introduced by Assembly Members Allen and Achadjian

(Principal coauthor: Senator Blakeslee)

(*Coauthor: Assembly Member Mendoza*)

February 14, 2011

An act to amend, repeal, and add Section 1370 of the Penal Code, relating to defendants.

LEGISLATIVE COUNSEL'S DIGEST

AB 366, as amended, Allen. Defendants: involuntary antipsychotic medication.

Existing law provides that if a defendant becomes mentally incompetent, a trial or judgment related to that defendant shall be suspended until he or she becomes mentally competent. Existing law establishes procedures whereby the court determines the appropriate facility where an incompetent defendant shall be delivered for treatment, and determines whether the defendant consents to the administration of antipsychotic medication, or determines whether involuntary administration of antipsychotic medication is appropriate, as specified.

This bill would require, as of July 1, 2012, the court to determine if the defendant lacks capacity to make decisions regarding antipsychotic medication before seeking consent from the defendant for those medications. The bill would provide that when, under specified conditions and in the opinion of the treating psychiatrist, involuntary administration of antipsychotic medication becomes necessary, that medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of certifying that involuntary antipsychotic medication has become medically necessary and appropriate, an administrative law judge conducts a hearing and reviews the treating psychiatrist's determination to administer the medication and concurs in that determination. The bill would require the defendant to be represented at the hearing by an attorney or patients' rights advocate and would prescribe other rights of the defendant with respect to the hearing. ~~The~~

The bill would provide that if the administrative law judge concurs in the treating psychiatrist's certification, antipsychotic medication would be authorized to continue to be administered for the 21-day certification period and if the administrative law judge disagrees with the certification, the medication would not be administered until a court so ordered. The bill would require the treating psychiatrist to file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period, as specified, and would waive fees for the filing of the petition or other document or paper related to the petition. ~~The~~

The bill would require the court to determine, prior to the expiration of the 21-day certification period, whether the medication should be administered beyond the 21-day certification period, as specified. The bill would provide that an order for the involuntary administration of antipsychotic medication beyond the 21-day certification period would be valid for no more than one year, and would require the court to review the order 6 months after the order was made, as specified, to determine if the grounds for involuntary medication remain. *The bill would require reports at 6-month intervals, or until the defendant becomes mentally competent, and would require certain items to be addressed in the report, including, among other things, whether or not the defendant has the capacity to make decisions concerning antipsychotic medication. After reviewing the reports, a court would be required to determine whether the need for continued administration of antipsychotic medication exists, as specified. The bill would also provide that its terms*

do not preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing the involuntary administration of antipsychotic medication.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:

3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged shall proceed, and judgment may be pronounced.

6 (B) If the defendant is found mentally incompetent, the trial or
7 judgment shall be suspended until the person becomes mentally
8 competent.

9 (i) In the meantime, the court shall order that the mentally
10 incompetent defendant be delivered by the sheriff to a state hospital
11 for the care and treatment of the mentally disordered, or to any
12 other available public or private treatment facility approved by the
13 community program director that will promote the defendant's
14 speedy restoration to mental competence, or placed on outpatient
15 status as specified in Section 1600.

16 (ii) However, if the action against the defendant who has been
17 found mentally incompetent is on a complaint charging a felony
18 offense specified in Section 290, the prosecutor shall determine
19 whether the defendant previously has been found mentally
20 incompetent to stand trial pursuant to this chapter on a charge of
21 a Section 290 offense, or whether the defendant is currently the
22 subject of a pending Section 1368 proceeding arising out of a
23 charge of a Section 290 offense. If either determination is made,
24 the prosecutor shall so notify the court and defendant in writing.
25 After this notification, and opportunity for hearing, the court shall
26 order that the defendant be delivered by the sheriff to a state
27 hospital or other secure treatment facility for the care and treatment
28 of the mentally disordered unless the court makes specific findings
29 on the record that an alternative placement would provide more
30 appropriate treatment for the defendant and would not pose a
31 danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court must serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed and the district attorney for the county in which the violent felony charges are pending against the defendant.

(2) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall proceed as follows:

1 (A) The court shall order the community program director or a
2 designee to evaluate the defendant and to submit to the court within
3 15 judicial days of the order a written recommendation as to
4 whether the defendant should be required to undergo outpatient
5 treatment, or committed to a state hospital or to any other treatment
6 facility. No person shall be admitted to a state hospital or other
7 treatment facility or placed on outpatient status under this section
8 without having been evaluated by the community program director
9 or a designee.

10 (B) The court shall hear and determine whether the defendant,
11 with advice of his or her counsel, consents to the administration
12 of antipsychotic medication, and shall proceed as follows:

13 (i) If the defendant, with advice of his or her counsel, consents,
14 the court order of commitment shall include confirmation that
15 antipsychotic medication may be given to the defendant as
16 prescribed by a treating psychiatrist pursuant to the defendant's
17 consent. The commitment order shall also indicate that, if the
18 defendant withdraws consent for antipsychotic medication, after
19 the treating psychiatrist complies with the provisions of
20 subparagraph (C), the defendant shall be returned to court for a
21 hearing in accordance with this subdivision regarding whether
22 antipsychotic medication shall be administered involuntarily.

23 (ii) If the defendant does not consent to the administration of
24 medication, the court shall hear and determine whether any of the
25 following is true:

26 (I) The defendant lacks capacity to make decisions regarding
27 antipsychotic medication, the defendant's mental disorder requires
28 medical treatment with antipsychotic medication, and, if the
29 defendant's mental disorder is not treated with antipsychotic
30 medication, it is probable that serious harm to the physical or
31 mental health of the patient will result. Probability of serious harm
32 to the physical or mental health of the defendant requires evidence
33 that the defendant is presently suffering adverse effects to his or
34 her physical or mental health, or the defendant has previously
35 suffered these effects as a result of a mental disorder and his or
36 her condition is substantially deteriorating. The fact that a
37 defendant has a diagnosis of a mental disorder does not alone
38 establish probability of serious harm to the physical or mental
39 health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to paragraph (1) of subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be

1 taken with the defendant to the state hospital or other treatment
2 facility where the defendant is to be confined:

3 (A) The commitment order, including a specification of the
4 charges.

5 (B) A computation or statement setting forth the maximum term
6 of commitment in accordance with subdivision (c).

7 (C) A computation or statement setting forth the amount of
8 credit for time served, if any, to be deducted from the maximum
9 term of commitment.

10 (D) State summary criminal history information.

11 (E) Any arrest reports prepared by the police department or
12 other law enforcement agency.

13 (F) Any court-ordered psychiatric examination or evaluation
14 reports.

15 (G) The community program director's placement
16 recommendation report.

17 (H) Records of any finding of mental incompetence pursuant
18 to this chapter arising out of a complaint charging a felony offense
19 specified in Section 290 or any pending Section 1368 proceeding
20 arising out of a charge of a Section 290 offense.

21 (4) When the defendant is committed to a treatment facility
22 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
23 court makes the findings specified in clause (ii) or (iii) of
24 subparagraph (B) of paragraph (1) to assign the defendant to a
25 treatment facility other than a state hospital or other secure
26 treatment facility, the court shall order that notice be given to the
27 appropriate law enforcement agency or agencies having local
28 jurisdiction at the site of the placement facility of any finding of
29 mental incompetence pursuant to this chapter arising out of a
30 charge of a Section 290 offense.

31 (5) When directing that the defendant be confined in a state
32 hospital pursuant to this subdivision, the court shall select the
33 hospital in accordance with the policies established by the State
34 Department of Mental Health.

35 (6) (A) If the defendant is committed or transferred to a state
36 hospital pursuant to this section, the court may, upon receiving the
37 written recommendation of the medical director of the state hospital
38 and the community program director that the defendant be
39 transferred to a public or private treatment facility approved by
40 the community program director, order the defendant transferred

1 to that facility. If the defendant is committed or transferred to a
2 public or private treatment facility approved by the community
3 program director, the court may, upon receiving the written
4 recommendation of the community program director, transfer the
5 defendant to a state hospital or to another public or private
6 treatment facility approved by the community program director.
7 In the event of dismissal of the criminal charges before the
8 defendant recovers competence, the person shall be subject to the
9 applicable provisions of the Lanterman-Petris-Short Act (Part 1
10 (commencing with Section 5000) of Division 5 of the Welfare and
11 Institutions Code). Where either the defendant or the prosecutor
12 chooses to contest either kind of order of transfer, a petition may
13 be filed in the court for a hearing, which shall be held if the court
14 determines that sufficient grounds exist. At the hearing, the
15 prosecuting attorney or the defendant may present evidence bearing
16 on the order of transfer. The court shall use the same standards as
17 are used in conducting probation revocation hearings pursuant to
18 Section 1203.2.

19 Prior to making an order for transfer under this section, the court
20 shall notify the defendant, the attorney of record for the defendant,
21 the prosecuting attorney, and the community program director or
22 a designee.

23 (B) If the defendant is initially committed to a state hospital or
24 secure treatment facility pursuant to clause (ii) or (iii) of
25 subparagraph (B) of paragraph (1) and is subsequently transferred
26 to any other facility, copies of the documents specified in paragraph
27 (3) shall be taken with the defendant to each subsequent facility
28 to which the defendant is transferred. The transferring facility shall
29 also notify the appropriate law enforcement agency or agencies
30 having local jurisdiction at the site of the new facility that the
31 defendant is a person subject to clause (ii) or (iii) of subparagraph
32 (B) of paragraph (1).

33 (b) (1) Within 90 days of a commitment made pursuant to
34 subdivision (a), the medical director of the state hospital or other
35 treatment facility to which the defendant is confined shall make a
36 written report to the court and the community program director
37 for the county or region of commitment, or a designee, concerning
38 the defendant's progress toward recovery of mental competence.
39 Where the defendant is on outpatient status, the outpatient treatment
40 staff shall make a written report to the community program director

1 concerning the defendant's progress toward recovery of mental
2 competence. Within 90 days of placement on outpatient status, the
3 community program director shall report to the court on this matter.
4 If the defendant has not recovered mental competence, but the
5 report discloses a substantial likelihood that the defendant will
6 regain mental competence in the foreseeable future, the defendant
7 shall remain in the state hospital or other treatment facility or on
8 outpatient status. Thereafter, at six-month intervals or until the
9 defendant becomes mentally competent, where the defendant is
10 confined in a treatment facility, the medical director of the hospital
11 or person in charge of the facility shall report in writing to the
12 court and the community program director or a designee regarding
13 the defendant's progress toward recovery of mental competence.
14 Where the defendant is on outpatient status, after the initial 90-day
15 report, the outpatient treatment staff shall report to the community
16 program director on the defendant's progress toward recovery,
17 and the community program director shall report to the court on
18 this matter at six-month intervals. A copy of these reports shall be
19 provided to the prosecutor and defense counsel by the court. If the
20 report indicates that there is no substantial likelihood that the
21 defendant will regain mental competence in the foreseeable future,
22 the committing court shall order the defendant to be returned to
23 the court for proceedings pursuant to paragraph (2) of subdivision
24 (c). The court shall transmit a copy of its order to the community
25 program director or a designee.

26 (2) Any defendant who has been committed or has been on
27 outpatient status for 18 months and is still hospitalized or on
28 outpatient status shall be returned to the committing court where
29 a hearing shall be held pursuant to the procedures set forth in
30 Section 1369. The court shall transmit a copy of its order to the
31 community program director or a designee.

32 (3) If it is determined by the court that no treatment for the
33 defendant's mental impairment is being conducted, the defendant
34 shall be returned to the committing court. The court shall transmit
35 a copy of its order to the community program director or a
36 designee.

37 (4) At each review by the court specified in this subdivision,
38 the court shall determine if the security level of housing and
39 treatment is appropriate and may make an order in accordance
40 with its determination.

1 (c) (1) At the end of three years from the date of commitment
2 or a period of commitment equal to the maximum term of
3 imprisonment provided by law for the most serious offense charged
4 in the information, indictment, or misdemeanor complaint,
5 whichever is shorter, a defendant who has not recovered mental
6 competence shall be returned to the committing court. The court
7 shall notify the community program director or a designee of the
8 return and of any resulting court orders.

9 (2) Whenever any defendant is returned to the court pursuant
10 to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this
11 subdivision and it appears to the court that the defendant is gravely
12 disabled, as defined in subparagraph (B) of paragraph (1) of
13 subdivision (h) of Section 5008 of the Welfare and Institutions
14 Code, the court shall order the conservatorship investigator of the
15 county of commitment of the defendant to initiate conservatorship
16 proceedings for the defendant pursuant to Chapter 3 (commencing
17 with Section 5350) of Part 1 of Division 5 of the Welfare and
18 Institutions Code. Any hearings required in the conservatorship
19 proceedings shall be held in the superior court in the county that
20 ordered the commitment. The court shall transmit a copy of the
21 order directing initiation of conservatorship proceedings to the
22 community program director or a designee, the sheriff and the
23 district attorney of the county in which criminal charges are
24 pending, and the defendant's counsel of record. The court shall
25 notify the community program director or a designee, the sheriff
26 and district attorney of the county in which criminal charges are
27 pending, and the defendant's counsel of record of the outcome of
28 the conservatorship proceedings.

29 (3) If a change in placement is proposed for a defendant who
30 is committed pursuant to subparagraph (B) of paragraph (1) of
31 subdivision (h) of Section 5008 of the Welfare and Institutions
32 Code, the court shall provide notice and an opportunity to be heard
33 with respect to the proposed placement of the defendant to the
34 sheriff and the district attorney of the county in which criminal
35 charges are pending.

36 (4) Where the defendant is confined in a treatment facility, a
37 copy of any report to the committing court regarding the
38 defendant's progress toward recovery of mental competence shall
39 be provided by the committing court to the prosecutor and to the
40 defense counsel.

1 (d) The criminal action remains subject to dismissal pursuant
2 to Section 1385. If the criminal action is dismissed, the court shall
3 transmit a copy of the order of dismissal to the community program
4 director or a designee.

5 (e) If the criminal charge against the defendant is dismissed,
6 the defendant shall be released from any commitment ordered
7 under this section, but without prejudice to the initiation of any
8 proceedings that may be appropriate under the
9 Lanterman-Petris-Short Act, Part 1 (commencing with Section
10 5000) of Division 5 of the Welfare and Institutions Code.

11 (f) As used in this chapter, “community program director” means
12 the person, agency, or entity designated by the State Department
13 of Mental Health pursuant to Section 1605 of this code and Section
14 4360 of the Welfare and Institutions Code.

15 (g) For the purpose of this section, “secure treatment facility”
16 shall not include, except for state mental hospitals, state
17 developmental centers, and correctional treatment facilities, any
18 facility licensed pursuant to Chapter 2 (commencing with Section
19 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
20 3.2 (commencing with Section 1569) of, Division 2 of the Health
21 and Safety Code, or any community board and care facility.

22 (h) This section shall remain in effect only until July 1, 2012,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before July 1, 2012, deletes or extends that date.

25 SEC. 2. Section 1370 is added to the Penal Code, to read:

26 1370. (a) (1) (A) If the defendant is found mentally
27 competent, the criminal process shall resume, the trial on the
28 offense charged shall proceed, and judgment may be pronounced.

29 (B) If the defendant is found mentally incompetent, the trial or
30 judgment shall be suspended until the person becomes mentally
31 competent.

32 (i) In the meantime, the court shall order that the mentally
33 incompetent defendant be delivered by the sheriff to a state hospital
34 for the care and treatment of the mentally disordered, or to any
35 other available public or private treatment facility approved by the
36 community program director that will promote the defendant’s
37 speedy restoration to mental competence, or placed on outpatient
38 status as specified in Section 1600.

39 (ii) However, if the action against the defendant who has been
40 found mentally incompetent is on a complaint charging a felony

1 offense specified in Section 290, the prosecutor shall determine
2 whether the defendant previously has been found mentally
3 incompetent to stand trial pursuant to this chapter on a charge of
4 a Section 290 offense, or whether the defendant is currently the
5 subject of a pending Section 1368 proceeding arising out of a
6 charge of a Section 290 offense. If either determination is made,
7 the prosecutor shall so notify the court and defendant in writing.
8 After this notification, and opportunity for hearing, the court shall
9 order that the defendant be delivered by the sheriff to a state
10 hospital or other secure treatment facility for the care and treatment
11 of the mentally disordered unless the court makes specific findings
12 on the record that an alternative placement would provide more
13 appropriate treatment for the defendant and would not pose a
14 danger to the health and safety of others.

15 (iii) If the action against the defendant who has been found
16 mentally incompetent is on a complaint charging a felony offense
17 specified in Section 290 and the defendant has been denied bail
18 pursuant to subdivision (b) of Section 12 of Article I of the
19 California Constitution because the court has found, based upon
20 clear and convincing evidence, a substantial likelihood that the
21 person's release would result in great bodily harm to others, the
22 court shall order that the defendant be delivered by the sheriff to
23 a state hospital for the care and treatment of the mentally disordered
24 unless the court makes specific findings on the record that an
25 alternative placement would provide more appropriate treatment
26 for the defendant and would not pose a danger to the health and
27 safety of others.

28 (iv) The clerk of the court shall notify the Department of Justice
29 in writing of any finding of mental incompetence with respect to
30 a defendant who is subject to clause (ii) or (iii) for inclusion in his
31 or her state summary criminal history information.

32 (C) Upon the filing of a certificate of restoration to competence,
33 the court shall order that the defendant be returned to court in
34 accordance with Section 1372. The court shall transmit a copy of
35 its order to the community program director or a designee.

36 (D) A defendant charged with a violent felony may not be
37 delivered to a state hospital or treatment facility pursuant to this
38 subdivision unless the state hospital or treatment facility has a
39 secured perimeter or a locked and controlled treatment facility,
40 and the judge determines that the public safety will be protected.

1 (E) For purposes of this paragraph, “violent felony” means an
2 offense specified in subdivision (c) of Section 667.5.

3 (F) A defendant charged with a violent felony may be placed
4 on outpatient status, as specified in Section 1600, only if the court
5 finds that the placement will not pose a danger to the health or
6 safety of others. If the court places a defendant charged with a
7 violent felony on outpatient status, as specified in Section 1600,
8 the court must serve copies of the placement order on defense
9 counsel, the sheriff in the county where the defendant will be
10 placed and the district attorney for the county in which the violent
11 felony charges are pending against the defendant.

12 (2) Prior to making the order directing that the defendant be
13 confined in a state hospital or other treatment facility or placed on
14 outpatient status, the court shall proceed as follows:

15 (A) The court shall order the community program director or a
16 designee to evaluate the defendant and to submit to the court within
17 15 judicial days of the order a written recommendation as to
18 whether the defendant should be required to undergo outpatient
19 treatment, or committed to a state hospital or to any other treatment
20 facility. No person shall be admitted to a state hospital or other
21 treatment facility or placed on outpatient status under this section
22 without having been evaluated by the community program director
23 or a designee.

24 (B) The court shall hear and determine whether the defendant
25 lacks capacity to make decisions regarding the administration of
26 antipsychotic medication, and shall proceed as follows:

27 (i) The court shall hear and determine whether any of the
28 following is true:

29 (I) The defendant lacks capacity to make decisions regarding
30 antipsychotic medication, the defendant’s mental disorder requires
31 medical treatment with antipsychotic medication, and, if the
32 defendant’s mental disorder is not treated with antipsychotic
33 medication, it is probable that serious harm to the physical or
34 mental health of the patient will result. Probability of serious harm
35 to the physical or mental health of the defendant requires evidence
36 that the defendant is presently suffering adverse effects to his or
37 her physical or mental health, or the defendant has previously
38 suffered these effects as a result of a mental disorder and his or
39 her condition is substantially deteriorating. The fact that a
40 defendant has a diagnosis of a mental disorder does not alone

1 establish probability of serious harm to the physical or mental
2 health of the defendant.

3 (II) The defendant is a danger to others, in that the defendant
4 has inflicted, attempted to inflict, or made a serious threat of
5 inflicting substantial physical harm on another while in custody,
6 or the defendant had inflicted, attempted to inflict, or made a
7 serious threat of inflicting substantial physical harm on another
8 that resulted in his or her being taken into custody, and the
9 defendant presents, as a result of mental disorder or mental defect,
10 a demonstrated danger of inflicting substantial physical harm on
11 others. Demonstrated danger may be based on an assessment of
12 the defendant's present mental condition, including a consideration
13 of past behavior of the defendant within six years prior to the time
14 the defendant last attempted to inflict, inflicted, or threatened to
15 inflict substantial physical harm on another, and other relevant
16 evidence.

17 (III) The people have charged the defendant with a serious crime
18 against the person or property; involuntary administration of
19 antipsychotic medication is substantially likely to render the
20 defendant competent to stand trial; the medication is unlikely to
21 have side effects that interfere with the defendant's ability to
22 understand the nature of the criminal proceedings or to assist
23 counsel in the conduct of a defense in a reasonable manner; less
24 intrusive treatments are unlikely to have substantially the same
25 results; and antipsychotic medication is in the patient's best
26 medical interest in light of his or her medical condition.

27 (ii) If the court finds any of the conditions described in clause
28 (i) to be true, the court shall issue an order authorizing the treatment
29 facility to involuntarily administer antipsychotic medication to the
30 defendant when and as prescribed by the defendant's treating
31 psychiatrist. The court shall not order involuntary administration
32 of psychotropic medication under subclause (III) of clause (i)
33 unless the court has first found that the defendant does not meet
34 the criteria for involuntary administration of psychotropic
35 medication under subclause (I) of clause (i) and does not meet the
36 criteria under subclause (II) of clause (i).

37 (iii) In all cases, the treating hospital, facility, or program may
38 administer medically appropriate antipsychotic medication
39 prescribed by a psychiatrist in an emergency as described in

1 subdivision (m) of Section 5008 of the Welfare and Institutions
2 Code.

3 (iv) If the court has determined that the defendant has the
4 capacity to make decisions regarding antipsychotic medication,
5 and if the defendant, with advice of his or her counsel, consents,
6 the court order of commitment shall include confirmation that
7 antipsychotic medication may be given to the defendant as
8 prescribed by a treating psychiatrist pursuant to the defendant's
9 consent. The commitment order shall also indicate that, if the
10 defendant withdraws consent for antipsychotic medication, after
11 the treating psychiatrist complies with the provisions of
12 subparagraph (C), the defendant shall be returned to court for a
13 hearing in accordance with subparagraphs (C) and (D) regarding
14 whether antipsychotic medication shall be administered
15 involuntarily.

16 (v) If the court has determined that the defendant has the
17 capacity to make decisions regarding antipsychotic medication
18 and if the defendant, with advice from his or her counsel, does not
19 consent, the court order for commitment shall indicate that, after
20 the treating psychiatrist complies with the provisions of
21 subparagraph (C), the defendant shall be returned to court for a
22 hearing in accordance with subparagraphs (C) and (D) regarding
23 whether antipsychotic medication shall be administered
24 involuntarily.

25 (vi) Any report made pursuant to paragraph (1) of subdivision
26 (b) shall include a description of any antipsychotic medication
27 administered to the defendant and its effects and side effects,
28 including effects on the defendant's appearance or behavior that
29 would affect the defendant's ability to understand the nature of
30 the criminal proceedings or to assist counsel in the conduct of a
31 defense in a reasonable manner. During the time the defendant is
32 confined in a state hospital or other treatment facility or placed on
33 outpatient status, either the defendant or the people may request
34 that the court review any order made pursuant to this subdivision.
35 The defendant, to the same extent enjoyed by other patients in the
36 state hospital or other treatment facility, shall have the right to
37 contact the patients' rights advocate regarding his or her rights
38 under this section.

39 (C) If the defendant consented to antipsychotic medication as
40 described in clause (iv) of subparagraph (B), but subsequently

1 withdraws his or her consent, or, if involuntary antipsychotic
2 medication was not ordered pursuant to clause (v) of subparagraph
3 (B), and the treating psychiatrist determines that antipsychotic
4 medication has become medically necessary and appropriate, the
5 treating psychiatrist shall make efforts to obtain informed consent
6 from the defendant for antipsychotic medication. If informed
7 consent is not obtained from the defendant, and the treating
8 psychiatrist is of the opinion that the defendant lacks capacity to
9 make decisions regarding antipsychotic medication based on the
10 conditions described in subclause (I) or (II) of clause (i) of
11 subparagraph (B), the treating psychiatrist shall certify whether
12 the lack of capacity and any applicable conditions described above
13 exist. That certification shall contain an assessment of the current
14 mental status of the defendant and the opinion of the treating
15 psychiatrist that involuntary antipsychotic medication has become
16 medically necessary and appropriate.

17 (D) (i) If the treating psychiatrist certifies that antipsychotic
18 medication has become medically necessary and appropriate
19 pursuant to subparagraph (C), antipsychotic medication may be
20 administered to the defendant for not more than 21 days, provided,
21 however, that, within 72 hours of the certification, the defendant
22 is provided a medication review hearing before an administrative
23 law judge to be conducted at the facility where the defendant is
24 receiving treatment. The treating psychiatrist shall present the case
25 for the certification for involuntary treatment and the defendant
26 shall be represented by an attorney or a patients' rights advocate.
27 The attorney or patients' rights advocate shall be appointed to meet
28 with the defendant no later than one day prior to the medication
29 review hearing to review the defendant's rights at the medication
30 review hearing, discuss the process, answer questions or concerns
31 regarding involuntary medication or the hearing, assist the
32 defendant in preparing for the hearing and advocating for his or
33 her interests at the hearing, review the panel's final determination
34 following the hearing, advise the defendant of his or her right to
35 judicial review of the panel's decision, and provide the defendant
36 with referral information for legal advice on the subject. The
37 defendant shall also have the following rights with respect to the
38 medication review hearing:

39 (I) To being given timely access to the defendant's records.

1 (II) To be present at the hearing, unless the defendant waives
2 that right.

3 (III) To present evidence at the hearing.

4 (IV) To question persons presenting evidence supporting
5 involuntary medication.

6 (V) To make reasonable requests for attendance of witnesses
7 on the defendant's behalf.

8 (VI) To a hearing conducted in an impartial and informal
9 manner.

10 (ii) If the administrative law judge determines that the defendant
11 either meets the criteria specified in subclause (I) of clause (i) of
12 subparagraph (B), or meets the criteria specified in subclause (II)
13 of clause (i) of subparagraph (B), then antipsychotic medication
14 may continue to be administered to the defendant for the 21-day
15 certification period. Concurrently with the treating psychiatrist's
16 certification, the treating psychiatrist shall file a copy of the
17 certification and a petition with the court for issuance of an order
18 to administer antipsychotic medication beyond the 21-day
19 certification period. For purposes of this subparagraph, the treating
20 psychiatrist shall not be required to pay or deposit any fee for the
21 filing of the petition or other document or paper related to the
22 petition.

23 (iii) If the administrative law judge disagrees with the
24 certification, medication may not be administered involuntarily
25 until the court determines that antipsychotic medication should be
26 administered pursuant to this section.

27 (iv) The court shall provide notice to the prosecuting attorney
28 and to the attorney representing the defendant, and shall hold a
29 hearing, no later than 18 days from the date of the certification, to
30 determine whether antipsychotic medication should be ordered
31 beyond the certification period.

32 (v) If, as a result of the hearing, the court determines that
33 antipsychotic medication should be administered beyond the
34 certification period, the court shall issue an order authorizing the
35 administration of that medication.

36 (vi) The court shall render its decision on the petition and issue
37 its order no later than three calendar days after the hearing and, in
38 any event, no later than the expiration of the 21-day certification
39 period.

1 (3) When the court orders that the defendant be confined in a
2 state hospital or other public or private treatment facility, the court
3 shall provide copies of the following documents which shall be
4 taken with the defendant to the state hospital or other treatment
5 facility where the defendant is to be confined:

6 (A) The commitment order, including a specification of the
7 charges.

8 (B) A computation or statement setting forth the maximum term
9 of commitment in accordance with subdivision (c).

10 (C) A computation or statement setting forth the amount of
11 credit for time served, if any, to be deducted from the maximum
12 term of commitment.

13 (D) State summary criminal history information.

14 (E) Any arrest reports prepared by the police department or
15 other law enforcement agency.

16 (F) Any court-ordered psychiatric examination or evaluation
17 reports.

18 (G) The community program director's placement
19 recommendation report.

20 (H) Records of any finding of mental incompetence pursuant
21 to this chapter arising out of a complaint charging a felony offense
22 specified in Section 290 or any pending Section 1368 proceeding
23 arising out of a charge of a Section 290 offense.

24 (4) When the defendant is committed to a treatment facility
25 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
26 court makes the findings specified in clause (ii) or (iii) of
27 subparagraph (B) of paragraph (1) to assign the defendant to a
28 treatment facility other than a state hospital or other secure
29 treatment facility, the court shall order that notice be given to the
30 appropriate law enforcement agency or agencies having local
31 jurisdiction at the site of the placement facility of any finding of
32 mental incompetence pursuant to this chapter arising out of a
33 charge of a Section 290 offense.

34 (5) When directing that the defendant be confined in a state
35 hospital pursuant to this subdivision, the court shall select the
36 hospital in accordance with the policies established by the State
37 Department of Mental Health.

38 (6) (A) If the defendant is committed or transferred to a state
39 hospital pursuant to this section, the court may, upon receiving the
40 written recommendation of the medical director of the state hospital

1 and the community program director that the defendant be
2 transferred to a public or private treatment facility approved by
3 the community program director, order the defendant transferred
4 to that facility. If the defendant is committed or transferred to a
5 public or private treatment facility approved by the community
6 program director, the court may, upon receiving the written
7 recommendation of the community program director, transfer the
8 defendant to a state hospital or to another public or private
9 treatment facility approved by the community program director.
10 In the event of dismissal of the criminal charges before the
11 defendant recovers competence, the person shall be subject to the
12 applicable provisions of the Lanterman-Petris-Short Act (Part 1
13 (commencing with Section 5000) of Division 5 of the Welfare and
14 Institutions Code). Where either the defendant or the prosecutor
15 chooses to contest either kind of order of transfer, a petition may
16 be filed in the court for a hearing, which shall be held if the court
17 determines that sufficient grounds exist. At the hearing, the
18 prosecuting attorney or the defendant may present evidence bearing
19 on the order of transfer. The court shall use the same standards as
20 are used in conducting probation revocation hearings pursuant to
21 Section 1203.2.

22 Prior to making an order for transfer under this section, the court
23 shall notify the defendant, the attorney of record for the defendant,
24 the prosecuting attorney, and the community program director or
25 a designee.

26 (B) If the defendant is initially committed to a state hospital or
27 secure treatment facility pursuant to clause (ii) or (iii) of
28 subparagraph (B) of paragraph (1) and is subsequently transferred
29 to any other facility, copies of the documents specified in paragraph
30 (3) shall be taken with the defendant to each subsequent facility
31 to which the defendant is transferred. The transferring facility shall
32 also notify the appropriate law enforcement agency or agencies
33 having local jurisdiction at the site of the new facility that the
34 defendant is a person subject to clause (ii) or (iii) of subparagraph
35 (B) of paragraph (1).

36 (7) An order by the court authorizing involuntary medication
37 of the defendant shall be valid for no more than one year. The
38 court shall review the order six months after the order was made
39 to determine if the grounds for the authorization remain. In the
40 review, the court shall consider the reports of the treating

1 psychiatrist or psychiatrists and the defendant's patients' rights
2 advocate or attorney. The court may require testimony from the
3 treating psychiatrist or psychiatrists and the patients' rights
4 advocate or attorney, if necessary. The court may continue the
5 order authorizing involuntary medication for up to another six
6 months, or vacate the order, or make any other appropriate order.

7 (b) (1) Within 90 days of a commitment made pursuant to
8 subdivision (a), the medical director of the state hospital or other
9 treatment facility to which the defendant is confined shall make a
10 written report to the court and the community program director
11 for the county or region of commitment, or a designee, concerning
12 the defendant's progress toward recovery of mental competence.
13 Where the defendant is on outpatient status, the outpatient treatment
14 staff shall make a written report to the community program director
15 concerning the defendant's progress toward recovery of mental
16 competence. Within 90 days of placement on outpatient status, the
17 community program director shall report to the court on this matter.
18 If the defendant has not recovered mental competence, but the
19 report discloses a substantial likelihood that the defendant will
20 regain mental competence in the foreseeable future, the defendant
21 shall remain in the state hospital or other treatment facility or on
22 outpatient status. Thereafter, at six-month intervals or until the
23 defendant becomes mentally competent, where the defendant is
24 confined in a treatment facility, the medical director of the hospital
25 or person in charge of the facility shall report in writing to the
26 court and the community program director or a designee regarding
27 the defendant's progress toward recovery of mental competence.
28 Where the defendant is on outpatient status, after the initial 90-day
29 report, the outpatient treatment staff shall report to the community
30 program director on the defendant's progress toward recovery,
31 and the community program director shall report to the court on
32 this matter at six-month intervals. A copy of these reports shall be
33 provided to the prosecutor and defense counsel by the court. If the
34 report indicates that there is no substantial likelihood that the
35 defendant will regain mental competence in the foreseeable future,
36 the committing court shall order the defendant to be returned to
37 the court for proceedings pursuant to paragraph (2) of subdivision
38 (c). The court shall transmit a copy of its order to the community
39 program director or a designee.

1 (2) *Where the court has issued an order authorizing the treating*
2 *facility to involuntarily administer antipsychotic medication to the*
3 *defendant, the reports made at six-month intervals concerning the*
4 *defendant's progress toward regaining competency shall also*
5 *consider the issue of involuntary medication. Each report shall*
6 *include, but is not limited to, all the following:*

7 (A) *Whether or not the defendant has the capacity to make*
8 *decisions concerning antipsychotic medication.*

9 (B) *If the defendant lacks capacity to make decisions concerning*
10 *antipsychotic medication, whether the defendant risks serious harm*
11 *to his or her physical or mental health if not treated with*
12 *antipsychotic medication.*

13 (C) *Whether or not the defendant presents a danger to others*
14 *if he or she is not treated with antipsychotic medication.*

15 (D) *Whether the defendant has a mental illness for which*
16 *medications are the only effective treatment.*

17 (E) *Whether there are any side effects from the medication*
18 *currently being experienced by the defendant that would interfere*
19 *with the defendant's ability to collaborate with counsel.*

20 (F) *Whether there are any effective alternatives to medication.*

21 (G) *How quickly the medication is likely to bring the defendant*
22 *to competency.*

23 (H) *Whether the treatment plan includes methods other than*
24 *medication to restore the defendant to competency.*

25 (I) *A statement, if applicable, that no medication is likely to*
26 *restore the defendant to competency.*

27 (3) *After reviewing the reports, the court shall determine*
28 *whether or not grounds for the order authorizing involuntary*
29 *administration of antipsychotic medication still exist and shall do*
30 *one of the following:*

31 (A) *If the original grounds for involuntary medication still exist,*
32 *the order authorizing the treating facility to involuntarily*
33 *administer antipsychotic medication to the defendant shall remain*
34 *in effect.*

35 (B) *If the original grounds for involuntary medication no longer*
36 *exist, and there is no other basis for involuntary administration*
37 *of antipsychotic medication, the order for the involuntary*
38 *administration of antipsychotic medication shall be vacated.*

39 (C) *If the original grounds for involuntary medication no longer*
40 *exist, and the report states that there is another basis for*

1 *involuntary administration of antipsychotic medication, the court*
2 *shall set a hearing within 21 days to determine whether the order*
3 *for the involuntary administration of antipsychotic medication*
4 *shall be vacated or whether a new order for the involuntary*
5 *administration of antipsychotic medication shall be issued. The*
6 *hearing shall proceed as set forth in subparagraph (B) of*
7 *paragraph (2) of subdivision (a).*

8 ~~(2)~~

9 (4) Any defendant who has been committed or has been on
10 outpatient status for 18 months and is still hospitalized or on
11 outpatient status shall be returned to the committing court where
12 a hearing shall be held pursuant to the procedures set forth in
13 Section 1369. The court shall transmit a copy of its order to the
14 community program director or a designee.

15 ~~(3)~~

16 (5) If it is determined by the court that no treatment for the
17 defendant's mental impairment is being conducted, the defendant
18 shall be returned to the committing court. The court shall transmit
19 a copy of its order to the community program director or a
20 designee.

21 ~~(4)~~

22 (6) At each review by the court specified in this subdivision,
23 the court shall determine if the security level of housing and
24 treatment is appropriate and may make an order in accordance
25 with its determination. *If the court determines that the defendant*
26 *shall continue to be treated in the state hospital or on an outpatient*
27 *basis, the court shall determine issues concerning administration*
28 *of antipsychotic medication, as set forth in subparagraph (B) of*
29 *paragraph (2) of subdivision (a).*

30 (c) (1) At the end of three years from the date of commitment
31 or a period of commitment equal to the maximum term of
32 imprisonment provided by law for the most serious offense charged
33 in the information, indictment, or misdemeanor complaint,
34 whichever is shorter, a defendant who has not recovered mental
35 competence shall be returned to the committing court. The court
36 shall notify the community program director or a designee of the
37 return and of any resulting court orders.

38 (2) Whenever any defendant is returned to the court pursuant
39 to paragraph (1) or ~~(2)~~ (4) of subdivision (b) or paragraph (1) of
40 this subdivision and it appears to the court that the defendant is

1 gravely disabled, as defined in subparagraph (B) of paragraph (1)
2 of subdivision (h) of Section 5008 of the Welfare and Institutions
3 Code, the court shall order the conservatorship investigator of the
4 county of commitment of the defendant to initiate conservatorship
5 proceedings for the defendant pursuant to Chapter 3 (commencing
6 with Section 5350) of Part 1 of Division 5 of the Welfare and
7 Institutions Code. Any hearings required in the conservatorship
8 proceedings shall be held in the superior court in the county that
9 ordered the commitment. The court shall transmit a copy of the
10 order directing initiation of conservatorship proceedings to the
11 community program director or a designee, the sheriff and the
12 district attorney of the county in which criminal charges are
13 pending, and the defendant's counsel of record. The court shall
14 notify the community program director or a designee, the sheriff
15 and district attorney of the county in which criminal charges are
16 pending, and the defendant's counsel of record of the outcome of
17 the conservatorship proceedings.

18 (3) If a change in placement is proposed for a defendant who
19 is committed pursuant to subparagraph (B) of paragraph (1) of
20 subdivision (h) of Section 5008 of the Welfare and Institutions
21 Code, the court shall provide notice and an opportunity to be heard
22 with respect to the proposed placement of the defendant to the
23 sheriff and the district attorney of the county in which criminal
24 charges are pending.

25 (4) Where the defendant is confined in a treatment facility, a
26 copy of any report to the committing court regarding the
27 defendant's progress toward recovery of mental competence shall
28 be provided by the committing court to the prosecutor and to the
29 defense counsel.

30 (d) The criminal action remains subject to dismissal pursuant
31 to Section 1385. If the criminal action is dismissed, the court shall
32 transmit a copy of the order of dismissal to the community program
33 director or a designee.

34 (e) If the criminal charge against the defendant is dismissed,
35 the defendant shall be released from any commitment ordered
36 under this section, but without prejudice to the initiation of any
37 proceedings that may be appropriate under the
38 Lanterman-Petris-Short Act, Part 1 (commencing with Section
39 5000) of Division 5 of the Welfare and Institutions Code.

1 (f) As used in this chapter, “community program director” means
2 the person, agency, or entity designated by the State Department
3 of Mental Health pursuant to Section 1605 of this code and Section
4 4360 of the Welfare and Institutions Code.

5 (g) For the purpose of this section, “secure treatment facility”
6 shall not include, except for state mental hospitals, state
7 developmental centers, and correctional treatment facilities, any
8 facility licensed pursuant to Chapter 2 (commencing with Section
9 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
10 3.2 (commencing with Section 1569) of, Division 2 of the Health
11 and Safety Code, or any community board and care facility.

12 *(h) Nothing in this section shall preclude a defendant from filing*
13 *a petition for habeas corpus to challenge the continuing validity*
14 *of an order authorizing a treatment facility or outpatient program*
15 *to involuntarily administer antipsychotic medication to a person*
16 *being treated as incompetent to stand trial.*

17 ~~(h)~~

18 (i) This section shall become operative on July 1, 2012.